Ong Hock Sim J. (delivering oral judgment): The appellant in this case was convicted on his own plea to the following charge and sentenced to 9 months imprisonment:—

"That you on the 1st day of November, 1968 at 5.00 p.m. at No. 443, Beach Street, Penang, in the district of George Town, in the State of Penang, attempted to put one Seah Choon Hock (m) in fear of injury, to wit, hurt to his person, in order to the committing of extortion, and that you have thereby committed an offence punishable under section 385 of the Penal Code."

The appellant appeals to the court to set aside the sentence and impose a fine as he would lose his job if he were sentenced to imprisonment.

I regret that if I were to interfere with the discretion of the learned magistrate, there would be chaos in the lower courts so far as exercising the discretion in the matter of punishment is concerned. I cannot say the sentence imposed by the learned magistrate is manifestly excessive. In the circumstances I must therefore dismiss the appeal.

Appeal dismissed.

YEO HOCK HENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) February 7, 1969]
[Penang — Criminal Appeal No. 6 of 1969]

Criminal Law and Procedure — Sentence — Assaulting public servant — Fine of $80 held inadequate.

Prevention of Crime Ordinance, 1959, s. 3.

Penal Code, s. 353.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is inappropriate.

CRIMINAL APPEAL.

Baldev Singh Bhar for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for Public Prosecutor.

Ong Hock Sim J. (delivering oral judgment): The appellant was convicted on a charge of assaulting a public servant with intent to deter the public servant from discharging his duty, an offence punishable under section 353 of the Penal Code, and was fined $80 in default 3 weeks' imprisonment by the learned magistrate.

There are no grounds for holding that the arrest was illegal in view of section 3 of the Prevention of Crime Ordinance No. 13 of 1959, which empowers a police officer to arrest without a warrant any person wanted for the purpose of an inquiry. In the circumstances the cases cited by the appellant's counsel are not applicable and I propose to disregard them.

There may have been a conflict of evidence as to how the injuries came about. The learned magistrate has heard the two different versions and she has come to a finding of fact. The appellant denies having slapped the complainant but there is medical evidence to support that the complainant had suffered injuries.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is, to my mind, clearly inappropriate. I therefore set aside the fine and substitute therefor a sentence of 6 months' imprisonment with effect from today.

Sentenced of fine set aside; sentence of imprisonment imposed.

SERI & ANOR. v. ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.

[O.C.J. (Choor Singh J.) February 8, 1969]
[Singapore — Suit No. 1206 of 1966]

Insurance — Motor insurance — Use of vehicle for carriage of goods other than samples — Occupation stated in policy as clerk — Insured using vehicle for carriage of goods in connection with catering business — Insurers not liable under policy.

The plaintiffs obtained as damages and costs the sum of $24,998 in an action against a driver of a car whose negligent driving caused the death of a person of whose estate the plaintiffs were the administrators. In this action the plaintiffs claimed that sum from the defendant company as insurers. The defendant company repudiated liability on the ground that the defendant company did not cover use of the vehicle for carriage of goods other than samples in connection with any trade or business and that at the time of the accident the car was being used for carriage of goods other than samples.

The driver signed a proposal form describing himself as a clerk when he was in fact running a catering business during the day and in charge of a bar in the evenings. The catering business consisted of collecting cakes from several bakeries and selling and delivering them to various canteens and coffee shops. The defendant company agreed that the onus of proving that the car was being used at the time of the accident for the carriage of goods other than samples was on it and alleged that at the material time the driver was carrying cakes on the rear seat of the car thus using the car for the carriage of goods in connection with his catering business. The plaintiffs denied this allegation.

Held, dismissing the action: (1) the court should always strictly construe and enforce the conditions of user of a car in an insurance policy. *Jones* v. *Welsh Insurance Corporation Ltd.*(1) considered;

(2) in this case the evidence clearly showed that at the time of the accident the car was being used not in connection with the driver's declared business of a clerk, but for the carriage of goods in connection with his catering business.

Case referred to:—

(1) *Jones* v. *Welsh Insurance Corporation Ltd.* [1937] 4 All E.R. 149.

CIVIL SUIT.

J. Cashin (*T.G. Dunbar* with him) for the plaintiffs.

Tan Tee Seng for the defendants.

Choor Singh J.: In this action the plaintiffs claimed against the defendant company as the insurers of motor-car No. SU. 7632 the sum of $24,998 being the total amount of damages and costs awarded to the plaintiffs in an action against one Wong Sung Tau in respect of the death of one Sanadi bin Sastero which occurred as a result of the said Wong Sung Tau's negligent driving of the said motor-car.

The undisputed facts are these. In September 1961 Wong Sung Tau insured motor-car No. SU. 7632 with the defendant company. He signed a proposal form in which he described himself as a clerk. But in actual fact he ran a small catering business during the day and in the evenings he worked at the Horse Guard Bar at 175 Middle Road where he was in charge of the bar. The catering business consisted of collecting cakes from several bakeries and delivering them to various canteens and coffee shops. The cakes were sold to these canteens and coffee shops at a profit of two cents per cake. On the 4th January 1962 Wong was driving motor-car No. SU. 7632 along Bukit Timah Road when it was involved in an accident at the 8th mile stone. It was in this accident that the deceased Sanadi bin Sastero received fatal injuries. The plaintiffs, as the administratrix and co-administrator of the estate of the deceased, brought an action for negligence against Wong and were awarded damages in the sum of $22,250 and costs which were fixed at $2,748. The plaintiffs then commenced these proceedings to recover from the defendant company the fruits of the judgment obtained by them against Wong on the ground that the defendant company was liable under the terms of the policy of insurance entered into by them with Wong the owner of motor-car No. SU. 7632. The defendant company disclaimed liability.

It was alleged by the defendant company that at the time of the accident Wong was carrying cakes on the rear seat of his car; that the car was being used for carriage of goods in connection with Wong's catering business; that the insurance policy did not cover the said car when it was used for the carriage of goods other than samples; and that the death of the deceased was a liability which was not covered by the terms of the said policy. The plaintiffs denied all these allegations and in particular alleged that there were no cakes in the car at the time of the accident.

At the commencement of the trial, Mr. Cashin who appeared for the plaintiffs and Mr. Tan Tee Seng who appeared for the defendant company both agreed that the insurance policy issued to Wong by the defendant company did not cover use of the car "for the carriage of goods other than samples in connection with any trade or business" and the only issue in this case was an issue of fact, namely, "was the car being used at the time of the accident for carriage of goods other than samples?" Mr. Tan Tee Seng agreed further that the onus was on him to prove that the car was being so used.

The defendant company called five witnesses. The plaintiffs did not call any witness. The evidence placed before the court by the defendant company proved conclusively that at the time of the accident, the car was carrying cakes in trays placed on its rear seat. Quite apart from the evidence of Wong, and the evidence of Gomes who testified that he had on many occasions seen Wong leaving his house with cakes in his car, there was the incontrovertible evidence that when the police arrived at the scene to investigate the accident they found cakes in the car and these were taken back to the Sepoy Lines police station as "case property". The record book (Exhibit D.4) of Sepoy Lines police station was produced and this book showed two entries on the day of the accident:—

> "4.1.62 — 1.55 p.m.
>
> Federal Motors handed over goods or things motor SU. 7632. Cpl. 1797. There are two wooden boxes containing cakes. Accident 8th mile, Bukit Timah Road."
>
> "4.1.62 — 3.05 p.m.
>
> I handed over all the goods or things in Property Register 12 to Woon Sang Tau Identity Card No. SM4 02123, 522 Serangoon Garden Way."

Mohamed bin Abdul Rahim, corporal 135, testified that the 3.05 p.m. entry was in his handwriting and he made that entry when he handed the goods back to the person named in the entry. He explained that the 1.55 p.m. entry was made by corporal 3352 who received the goods and who was then in charge of the charge-room. Corporal 3352 has since then retired from the police force and lives somewhere in Malaysia. Mohamed stated further that he saw the goods when he handed them back; that there were two wooden boxes 2 ft. x 1 ft. and about 6 inches high; that the boxes contained cakes; that he did not count the cakes in each box; that there were altogether 40 to 50 cakes in both boxes and that some of the cakes were broken.

There was no doubt at all that at the time of the accident, Wong was carrying cakes in his car and the point I had to determine was whether that constituted "the carriage of goods other than samples in connection with any trade or business".

It was clear from the evidence that although Wong had in the proposal form declared himself to be a clerk, he was in fact employed as a bar boy in the evenings and during the day he delivered cakes. As the cakes were sold for profit, the delivering of the cakes during the day was a business in the proper sense of the term, though on a small scale. The real object was undoubtedly the making of a little extra money to supplement his wages as a bar boy. I was

therefore bound to hold that he was carrying on that business as a side line and the car at the time of the accident was accordingly being used by Wong, not in connection with his declared business of a clerk, but for the carriage of goods in connection with his catering business.

Counsel for the plaintiffs submitted that at the time of the accident, Wong was on his way home after having delivered the cakes; that the cakes found in the car were remnants; that they were broken cakes being taken home for consumption by his family and that under the circumstances the car was not being used for the carriage of goods. I rejected this submission because according to Wong he was going to a coffee stall near the scene of the accident to deliver some cakes there when the accident occurred. He pointed out the coffee stall in a photograph of the scene (Exhibit P.3). It was suggested that Wong was not speaking the truth and that he had fabricated this story about delivering cakes at the coffee stall merely to assist the defendant company to escape liability. I saw no reason to disbelieve Wong on this issue. The plaintiffs called no witnesses at all and there was no evidence to contradict the evidence of Wong on this point. The coffee stall at which he was going to deliver the cakes having been identified, the plaintiffs could have called the coffee stall-holder to disprove what Wong said. This they did not do. Furthermore, Mohamed, the corporal who returned the cakes to Wong at Sepoy Lines police station, testified that there were 40 to 50 cakes in the two trays and only some of them were broken. On this evidence could it be said that Wong was on his way home with a few remnant cakes, having finished his deliveries for the day? And as for Wong trying to assist the defendant company, there was no reason why he should assist them. As a matter of fact the plaintiffs had obtained judgment against him and it was in his interest to make the defendant company liable so that the judgment would be met by the defendant company. Why should Wong go out of his way to assist the defendant company to escape liability and thereby run the risk of he himself being made a bankrupt for failure to pay the judgment and costs awarded against him? In my opinion Wong was speaking the truth when he stated that he was on his way to the coffee stall to deliver cakes. Furthermore, having regard to the fact that there were still 40 to 50 cakes in the car, the probabilities of the matter did not support the plaintiffs' contention that Wong was on his way home after having completed his deliveries.

It was argued for the plaintiffs that they should not be penalised with the dismissal of their claim just because a few cakes were found in the car. In my opinion the court should always strictly construe and enforce the conditions of user of a car in an insurance policy. There is support for this view in *Jones* v. *Welsh Insurance Corporation, Ltd.*[1] In that case the plaintiff obtained a judgment against *T.* in respect of injuries caused by the negligent driving of *T.*'s motor-car. *T.* having no means, the plaintiff sued *T.*'s insurers, the defendant corporation, under the provisions of the Road Traffic Act, 1934, section 10(1). *T.*'s insurance policy covered the use of his car "for social, domestic and pleasure purposes," and for use "in connection with his business or profession" as stated in the schedule. *T.* was a motor mechanic, and was described as such in the schedule, but in his spare time farmed a few sheep. At the time of the accident, which caused the injuries, the car was being used to convey some sheep. It was held that *T.* must be regarded as carrying on a business of sheep-farming as a sideline and that at the time of the accident, his car was therefore being used not in connection with his business of a motor-mechanic, but for the carriage of goods in connection with a business other than that stated in the policy and the plaintiff could not recover.

In my opinion the evidence in this case clearly showed that at the time of the accident, the car was being used not in connection with Wong's declared business of a clerk, but for the carriage of goods in connection with his catering business. In the result the plaintiffs' action failed and had to be dismissed.

Action dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*